

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE AND CLAIMS**

**Call to Order:** By **CHAIRMAN MIKE COONEY**, on March 22, 2005 at 8:00 A.M., in Room 317 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mike Cooney, Chairman (D)  
Sen. Keith Bales (R)  
Sen. John Brueggeman (R)  
Sen. John Cobb (R)  
Sen. John Esp (R)  
Sen. Steven Gallus (D)  
Sen. Ken (Kim) Hansen (D)  
Sen. Bob Hawks (D)  
Sen. Bob Keenan (R)  
Sen. Rick Laible (R)  
Sen. Lane L. Larson (D)  
Sen. Greg Lind (D)  
Sen. Trudi Schmidt (D)  
Sen. Corey Stapleton (R)  
Sen. Jon Tester (D)  
Sen. Dan Weinberg (D)  
Sen. Carol Williams (D)

**Members Excused:** Sen. Don Ryan (D)  
Sen. Gregory D. Barkus (R)

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Taryn Purdy, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted:

Executive Action: SB 66; SB 249; SB 287; SB 319; SB 491; SB 224

**EXECUTIVE ACTION ON SB 66**

**Motion:** SEN. JOHN ESP moved that SB 66 DO PASS.

**Motion:** SEN. ESP moved that SB06601.ATP BE ADOPTED.

**EXHIBIT**(fcs63a01)

**Discussion:**

**SEN. KEITH BALES** explained the amendment changes the limit from \$5 million to \$100 million to expand the pool of businesses eligible for the tax credit. He noted that **SEN. BARKUS** had stated some compelling reasons for raising this limit during the hearing.

**SEN. GREG LIND** reported this is a difficult area to research. There are roughly 14,000 corporations in Montana; 40 of those are between \$5 million and \$100 million. There are two over \$100 million. He spoke with the sponsor, who asked the committee to resist the amendment. **SEN. LIND** indicated he would resist the amendment; the intent of the bill was to capture small business.

**SEN. RICK LAIBLE** maintained in his notes the sponsor said the reason for the bill was to provide economic development and create jobs. He assumed that the more jobs being created, the better it is for the state. If this is limited to \$5 million, there are 40 businesses that could not use this tax credit. He contended that fiscal notes look back instead of looking forward. He asked the committee to support the amendment.

**SEN. BALES** related the issue to his field, which is agriculture. He said \$5 million is an arbitrary figure and with land values going up, anybody in agriculture may find themselves discriminated against if this is not raised about the \$5 million level.

**Vote:** Motion failed 8-11 by roll call vote with **SEN. BALES, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, and SEN. STAPLETON** voting aye. **SEN. BARKUS** voted aye by proxy.

**Motion:** SEN. JOHN BRUEGGEMAN moved a CONCEPTUAL AMENDMENT FOR A \$10 MILLION CEILING.

**Discussion:**

**SEN. BRUEGGEMAN** advised companies like Summit Engineering are probably way above the \$10 million. It is not hard to meet the \$5 million threshold. Every piece of equipment a company brings on probably costs \$100,000. For every piece of equipment, they probably bring on somebody who will be making \$25 an hour. These are family-supporting types of jobs. He did not want to leave out folks in the agricultural community; many of them have high land value but do not see a lot of net profit.

**SEN. BOB HAWKS** asked if this would increase the general fund deficit by twice the fiscal note they had before them. **SEN. BRUEGGEMAN** did not think that would be the case. His argument was these businesses are the businesses most able to take advantage of this tax credit and actually hire more people. If businesses are taking advantage of this, he argued that it is not a cost to the general fund. They would increase tax revenue in a proportion greater than what they would be spending on the credit.

**CHAIRMAN MIKE COONEY** indicated his concern was that when **SEN. SAM KITZENBERG** presented this bill, he indicated he viewed this as a pilot project to see how this would work. He understood the attempts to make the bill more encompassing. He was not as uncomfortable with this amendment as the first one, but it would go from a pilot project to a full-fledged program, and they are not sure how it may or may not work. If they do not amend this bill, it goes back to Third Reading. There would not be an ability to amend the bill unless it is put back to Second Reading.

**SEN. BALES** was not sure \$10 million would do the job. He thought there would be a serious problem when the Department of Revenue tries to implement this. He did not think the Department of Revenue knows the value of those companies. That was one reason to do the \$100 million; it would be easier to establish.

**Vote:** Motion failed 9-10 by roll call vote with **SEN. BALES, SEN. BRUEGGEMAN, SEN. COBB, SEN. ESP, SEN. GALLUS, SEN. KEENAN, SEN. LAIBLE,** and **SEN. STAPLETON** voting aye. **SEN. BARKUS** voted aye by proxy.

**Motion:** **SEN. HAWKS** moved that SB 66 DO PASS.

**CHAIRMAN COONEY** advised the bill had already been moved, and **SEN. ESP** withdrew his motion.

**Vote:** Motion carried 14-4 by roll call vote with SEN. BALES, SEN. ESP, and SEN. KEENAN voting no. SEN. BARKUS voted aye by proxy.

**CHAIRMAN COONEY** appointed a subcommittee to look at SB 445 and SB 501, along with interested parties, and report back to the committee. The subcommittee was **SEN. CAROL WILLIAMS, Chair, SEN. STEVE GALLUS,** and **SEN. COREY STAPLETON.**

**EXECUTIVE ACTION ON SB 249**

*{Tape: 1; Side: A; Approx. Time Counter: 21.5}*

**Motion:** SEN. COBB moved that SB 249 DO PASS.

**Motion:** SEN. COBB moved that SB024901.ATP BE ADOPTED.

**EXHIBIT**(fcs63a02)

**Discussion:**

**SEN. COBB** said this amendment takes away the fiscal note and any assessment that has to be done by the Department of Corrections or Department of Health and Human Services (DPHHS). They still have to coordinate and come up with a plan for treatment standards and how to assist offenders when they transition out of prisons and secure facilities to substance abuse programs. This bill will terminate in two years. He consulted the Department and **Joe Williams, Department of Corrections,** signed off on the amendment.

**EXHIBIT**(fcs63a03)

He said **Joyce DeCunzo, Addictive and Mental Disorders,** indicated that they do not need any new funds to work together to get this done. Without the assessment, the funds are not needed. They still have to report back to the interim committees.

**EXHIBIT**(fcs63a04)

**Vote:** Motion carried unanimously by voice vote.

**Motion:** SEN. COBB moved that SB 249 DO PASS AS AMENDED.

**Discussion:**

**SEN. STAPLETON** asked if there is no cost associated with this bill. **SEN. COBB** replied, according to the two Departments, that is correct. **SEN. STAPLETON** asked how they would develop a statewide data management system without funding. **SEN. COBB** said the amendment takes that out. On lines 15-20, they are required to coordinate and adopt correction treatment standards, adopt procedures to assist transition of offenders, and report back to the interim committees.

**Vote:** Motion carried unanimously by voice vote.

**SEN. COBB** requested that (Exhibit 3) be made part of the record. **CHAIRMAN COONEY** so ordered.

**EXECUTIVE ACTION ON SB 287**

*{Tape: 1; Side: B; Approx. Time Counter: 25.8}*

**Motion:** **SEN. TRUDY SCHMIDT** moved that SB 287 DO PASS.

**Motion:** **SEN. SCHMIDT** moved TO AMEND PAGE 3, LINE 16, STRIKING "DEPARTMENT OF HEALTH AND HUMAN SERVICES" AND INSERTING "DEPARTMENT OF JUSTICE".

**Discussion:**

**SEN. SCHMIDT** advised this changes the fiscal note completely. The Meth Watch Program will be in the Department of Justice. The Department said they can incorporate that into their current work without any funds.

**Vote:** Motion carried unanimously by voice vote.

**Motion:** **SEN. BOB KEENAN** moved that SB028703.ASB BE ADOPTED.

**EXHIBIT** (fcs63a05)

**Discussion:**

**SEN. KEENAN** said the amendment would allow business establishments that are selling these products to continue selling them. It opens up the restriction of this bill where these products can only be purchased at a licensed pharmacy. His concern was rural areas and the fact that pharmacies are busy places. It has been proven in other states that restricting the

sales to a locked case or an area that is not accessible to customers is sufficient to reduce the use of these products for meth production. This amendment was considered to be a reasonable amendment a few weeks ago, according to **Attorney General McGrath**. He has since attended a conference, has taken a hard line, and does not support this amendment at this point in time.

**SEN. SCHMIDT** stated firm opposition to this amendment. It was proven in other states that this is not working, and the way the bill is currently written is working to restrict this product. This amendment does not address the record keeping for law enforcement, so there is no record of a purchase. She requested that **Mike Batiste, Department of Justice**, be allowed to address this amendment.

**Mr. Batiste** advised the Attorney General likes the bill in its current form, and those in the law enforcement community do as well. He understood the concerns of those in rural Montana relative to being able to purchase products when they need them. Language in the bill allows for gel and liquid products to be purchased. They are concerned about the possibility that, in some stores, someone may decide to allow extra purchases

**{Tape: 1; Side: B}**

by people that are trying to exceed the number of purchases allowed by law. They think there will be more checks and balances in the pharmacy.

**SEN. SCHMIDT** requested that **Craig Campbell, Missouri River Task Force**, be allowed to comment. **SEN. STAPLETON** objected, because the committee was in executive action.

**SEN. DAN WEINBERG** said he understood that it is inconvenient to restrict these medications to the pharmacy. He noted there are a lot of inconveniences, such as with air travel, when circumstances create the necessity. He thought the use of meth is creating a necessity, and he was willing to put up with the inconvenience. He supported the bill in its current form.

**Vote:** Motion failed 7-12 by voice vote with **SEN. BALES, SEN. BRUEGGEMAN, SEN. ESP, SEN. KEENAN, SEN. LAIBLE, and SEN. STAPLETON** voting aye. **SEN. BARKUS** voted aye by proxy. (*Please note: SEN. COBB voted no. The vote was reported out as 8-11.*)

**Motion:** **SEN. SCHMIDT** moved that SB 287 DO PASS AS AMENDED.

**Discussion:**

**SEN. GALLUS** asked where in the bill the distinction is made between liquid, gel caps, and solids. **SEN. SCHMIDT** advised that is on page 3, line 5. Liquid and gel caps will be sold over the counter.

**SEN. LIND** maintained the only thing being lost in the changes in formulation from the solid form to liquid or gel cap is the ability to produce the time release preparation. He stressed that these medications are not the first line of treatment and are used for symptomatic relief.

**Vote:** Motion carried unanimously by voice vote.

**EXECUTIVE ACTION ON SB 319**

*{Tape: 1; Side: B; Approx. Time Counter: 6.0}*

**Motion:** **SEN. WILLIAMS** moved that SB 319 DO PASS.

**Discussion:**

**CHAIRMAN COONEY** advised that, after amendments, the fiscal note was reduced somewhat, but not to the extent that **SEN. JON ELLINGSON** thought it would be. **SEN. ELLINGSON** did not sign the fiscal note, because he did not agree with it.

**SEN. ESP** asked if this should be a priority of this committee based on the new fiscal note. **CHAIRMAN COONEY** would not say what should be a priority of this committee. If this bill passes, it will have to be put in HB 2 and pass muster in the process. The committee can adopt it if it finds there is merit in the bill, but it has a ways to go before getting funded. **SEN. ESP** suggested the Chairman might have more of a handle on the pieces of the puzzle that still need to be funded. **CHAIRMAN COONEY** indicated there are a number of cat and dog bills on the status sheet that they ultimately will have to decide whether to fund. This is one that would have to be included if it is going to be funded and move forward. He did not know if this is a priority that will make it through the process. He talked to **SEN. ELLINGSON** about this, and he understands this bill will compete with a lot of other issues out there if it moves forward.

**SEN. HAWKS** addressed the fiscal note and declared the issue comes down to what is the cost of good justice. Good justice in his mind is apolitical. If they are to wrestle the justice system from politics or wrestle the judicial system from absolute dependence on the legal profession for support for elections, then this bill is good policy. It has to stack up against other tough decisions in the end. He wanted to see the bill move on.

**CHAIRMAN COONEY** advised this bill has already been amended and will have to go back to Second Reading.

**SEN. ESP** inquired if it would be advisable for this committee to put a contingent voidness on the bill if it is not funded in HB 2. **CHAIRMAN COONEY** advised he had no problem with contingent voidness. **SEN. ESP** said it did not seem reasonable to have 22 pages of new law if it will not have any effect or force.

**Motion:** **SEN. ESP** moved that CONTINGENT VOIDNESS BE ADDED IF THE SB 319 IS NOT FUNDED IN HB 2.

**Discussion:**

**SEN. WEINBERG** asked how this would work. He expressed concern about the legislation being more vulnerable to future Legislatures. **CHAIRMAN COONEY** conveyed that anything they do is subject to review by any future Legislature. **SEN. WEINBERG** asked why they would amend the bill in this manner if it is subject to future Legislatures anyway. **SEN. ESP** advised this would have no force of law unless it is funded. **SEN. WEINBERG** thought that was the case anyway. **Taryn Purdy, Legislative Fiscal Division,** advised, if they pass this bill without any funding in it, then it goes forward. The Commissioner of Political Practices would still have a legal obligation to follow the law, and they would have to put in for a supplemental for whatever costs may be incurred. If the contingent voidness were to go in, this would not become law unless it was funded. In that case, it would have to be reintroduced in two years if was to actually become law. **SEN. WEINBERG** stated, based on that explanation, if they vote in this amendment they are creating a situation where this bill and law would be more vulnerable in the future.

**SEN. LIND** asked **SEN. ELLINGSON** to comment. **SEN. ELLINGSON** thought the funding through HB 2 is not the only funding mechanism. There is still the provision in the bill that would allow the collection of voluntary contributions. There has been discussion within the State Bar Association of a campaign to raise contributions to fund this. That is a possible funding



source. If no money is appropriated in HB 2, and an insufficient amount is voluntarily contributed, he did not want the Legislature to put something on the books that would require a supplemental. There may be a supplemental required anyway, even if the bill is funded in HB 2. He would rather have this law on the books, and, if there is money in HB 2, to have it funded. If there is no money in HB 2, he would still like to have this on the books, but without the requirement for these amounts to be provided to campaigns. They would be coming in with a supplemental for the entire amount. He thought it is a strong policy statement that they can make that they are in favor of public funding for Supreme Court candidates. The only thing they would have to do in the next Legislative session is adequately fund it.

**Ms. Purdy** asked if his second choice would be for the bill to go on the books, and only the amount that would be collected in contributions would be paid out to the candidates. **SEN. ELLINGSON** clarified that money would be available; if that were not enough to do the job, then so be it.

**SEN. ESP** emphasized that the reason he proposed the amendment for contingent voidness is, if they do not fund it this time, it goes away. There is an historic surplus of funds, and **SEN. ELLINGSON** is the Majority Leader of the Senate. If they cannot get it funded this time, given the conditions, the chances of funding it in the future are slim. He asked **SEN. ELLINGSON** if he agreed that getting it done in the future is less likely than it is now. **SEN. ELLINGSON** said that is one consideration. They may discover as they continue through the process of electing Supreme Court judges that the case is more and more compelling for providing for the option of public financing. They may decide they are sick and tired of this escalating expenditure of money that has a corrosive effect on public perception of the Supreme Court justices. That perception is that they are in the pocket of the people that give them the most money. The other consideration is there is extra money now, and that it would be provided in this session. A third consideration would be what the bar can do itself. If it is on the books, it gives the bar the ability to raise funds. There was strong support for the bill from the bar as well as the American Bar Association. He did not know if they could look to the bar association to provide all the funding, but it is a priority for them. He would like to have this on the books and give them a target. **SEN. ESP** advised last session they put a target in the law which allowed contributing to a fund that would go to match federal funds for CHIP. There were a lot of promises to give money to that and none of it ever came. He was

a little suspect of doing something like this, based on those kinds of promises.

**CHAIRMAN COONEY** advised, since **SEN. ELLINGSON** has presented another option, he spoke to **Ms. Purdy** about an amendment along those lines. It is more complex than just a conceptual amendment.

**SEN. ESP** and **SEN. WILLIAMS** withdrew their motions.

#### EXECUTIVE ACTION ON SB 491

*{Tape: 1; Side: B; Approx. Time Counter: 26.6}*

Motion: **SEN. GALLUS** moved that SB 491 DO PASS AS AMENDED.

#### Discussion:

**SEN. GALLUS** reminded the committee that they amended the bill to not include overtime in a firefighter's retirement benefit. The amended fiscal note is zero. The Montana State Firefighters' Association still supports the bill.

**SEN. RICK LAIBLE** asked what the bill does now. **SEN. GALLUS** indicated the bill is a significant piece of legislation at this point. It would allow a firefighter to have to ability to move from one department to another and migrate upwards in rank to the position of chief. That might be in a community that is smaller than the one where they are a captain. This will allow them to use their higher salary as the 36 highest average months that they incurred during their career for retirement purposes. He thought it would benefit departments across the state.

Vote: Motion carried unanimously by voice vote.

#### EXECUTIVE ACTION ON SB 224

*{Tape: 1; Side: B; Approx. Time Counter: 30.5}*

Motion: **SEN. COBB** moved that SB 224 DO PASS.

#### Discussion:

**SEN. HAWKS** spoke about the need for a coordinating amendment with SB 359.

**{Tape: 2; Side: A}**

**CHAIRMAN COONEY** recalled that **SEN. DON RYAN** told him he did not think that coordinating language was needed. **Ms. Purdy** advised the coordinating language had to do with the way it appeared on the status sheet and whether or not it would show as an additional cost. Discussions with **Terry Johnson, Legislative Fiscal Division**, indicated it would not be necessary.

**SEN. ESP** asked for an explanation of the bill, as he may have missed the hearing.

**SEN. COBB** withdrew his motion.

**CHAIRMAN COONEY** said **SEN. RYAN** was in the best position to describe this bill.

**SEN. LAIBLE** advised the bill would allow for distance learning, and allow schools ANB for distance learning students.

**SEN. BALES** affirmed the bill puts in a mechanism whereby they can get credit for ANB through distance learning. That is primarily what the bill did.

**CHAIRMAN COONEY** said he received a note from one of the witnesses that said they wanted to clarify the role of the E Learning Consortium. He asked if the bill has anything to do with that.

**SEN. LAIBLE** indicated, it does not.

**SEN. ESP** asked **Ms. Purdy** about SB 358. **Ms. Purdy** stated there was one technical amendment.

*The committee received a visit from the Helena Christian Academy. The committee members explained the function and business of the committee to the students during a question and answer session.*

**ADJOURNMENT**

Adjournment: 11:35 A.M.

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SEN. MIKE COONEY, Chairman

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PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

**EXHIBIT ([fcs63aad0.PDF](#))**